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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

JUNE LAMARR,

Plaintiff and Appellant,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Defendant and Respondent.

C082569

(Super. Ct. No. 34-2015-
00181352)

We must decide whether plaintiff June LaMarr has demonstrated that she can amend her first amended complaint to assert a denial of due process cause of action against her employer. We conclude that she has. Accordingly, we will reverse the portion of the judgment sustaining without leave to amend the demurrer to LaMarr's denial of due process cause of action.

BACKGROUND

LaMarr began working at UC Davis Medical Center as a full-time employee in 1998. Representing herself, she sued UC Davis Medical Center, Walter Knowles, and Kerri Stuart, asserting causes of action for discrimination in violation of the California Fair Employment and Housing Act (FEHA), breach of contract, defamation, and violation of Business and Professions Code section 17200 et seq., in relation to disciplinary action taken against her.

The Regents of the University of California, Knowles and Stuart demurred to the complaint.¹ They also moved to strike the discrimination and defamation causes of action pursuant to Code of Civil Procedure section 425.16. The trial court granted the motion to strike, dismissed the entire action against Knowles, entered judgment in favor of Stuart, and sustained the demurrer to all causes of action, granting leave to amend the breach of contract cause of action and the cause of action for violation of Business and Professions Code section 17200 et seq.

LaMarr filed a first amended complaint. In addition to causes of action for breach of contract and violation of Business and Professions Code section 17200 et seq., the first amended complaint alleged a cause of action for denial of due process against the Regents. The denial of due process cause of action asserted the following: that Government Code section 19570 [part of the Civil Service Act (Gov. Code, § 18500 et seq.)] lists demotion as an adverse action, that Government Code section 19590 describes the applicable disciplinary procedure when a public employee is subject to an adverse action, and that LaMarr had been a MOSC V supervisor but was demoted when she was

¹ The Regents of the University of California were purportedly sued as UC Davis Medical Center in error. For ease of reference, we will collectively refer to the Regents of the University of California, the University of California at Davis, and the UC Davis Medical Center as the Regents.

placed in a MOSC III position. LaMarr alleged she did not receive written notice of her demotion as described in Government Code section 19590, subdivision (b), she was given no opportunity to contest the demotion as required by Government Code section 19590, subdivision (c), and she never received any writing explaining why she was to be transferred. LaMarr claimed a continuing reduction in pay and benefits.

The Regents demurred to all causes of action in the first amended complaint, noting that LaMarr added the new denial of due process cause of action without leave of court, and arguing, among other things, that the Civil Service Act did not apply to the Regents. LaMarr opposed the demurrer, arguing that the Regents violated its own just cause policy, which was not part of the Civil Service Act.

The trial court granted the demurrer in its entirety without leave to amend. It concluded that although it did not give LaMarr leave to add the denial of due process cause of action, the Regents did not move to strike the cause of action. The trial court added: "Regents demur on the grounds that under the California Constitution, specifically Article VII, section 4(h), employees of the [Regents] are exempt from the Civil Service Act. The demurrer to the Denial of Due Process cause of action is sustained without leave [to amend.]" (Emphasis omitted.) Judgment on the first amended complaint was entered in favor of the Regents.

LaMarr's appellant's opening brief argued in part that the trial court erred in granting the motion to strike, but we granted the Regents' motion to dismiss that part of the appeal as untimely. The only issue before us concerns the demurrer to the denial of due process cause of action.

DISCUSSION

LaMarr contends the trial court erred in not giving her an opportunity to amend her denial of due process cause of action.

We review a trial court's decision to deny leave to amend for abuse of discretion. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) If the challenged pleading could be

amended to state a cause of action, the trial court abused its discretion in denying leave to amend and we will reverse; if not, there has been no abuse of discretion and we will affirm. (*Ibid.*) “It is the plaintiff’s burden on appeal to show in what manner it would be possible to amend a complaint to change the legal effect of the pleading; we otherwise presume the pleading has stated its allegations as favorably as possible.” (*Fuller v. First Franklin Financial Corp.* (2013) 216 Cal.App.4th 955, 962, fn. omitted.) “To meet this burden, a plaintiff must submit a proposed amended complaint or, on appeal, enumerate the facts and demonstrate how those facts establish a cause of action. [Citations.] Absent such a showing, the appellate court cannot assess whether or not the trial court abused its discretion by denying leave to amend.” (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 890; see *Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43-44 [“Allegations must be factual and specific, not vague or conclusionary.”].) A plaintiff can demonstrate the manner in which the complaint can be amended to cure a defect for the first time on appeal. (*Ross v. Creel Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 748; *Dudley v. Department of Transportation* (2001) 90 Cal.App.4th 255, 260.)

Citing *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 (*Skelly*), LaMarr argues that as a permanent employee of the Regents, she was entitled to due process when she was demoted. She says her employer failed to give her written notice of her demotion, any writing explaining the reasons for her demotion, and an opportunity to contest the demotion.

In *Skelly*, a permanent civil service employee of the State challenged his dismissal, arguing that the provisions of the Civil Service Act which permitted the taking of punitive action against permanent civil service employees without a prior hearing violated the due process guarantees of the federal and California Constitutions. (*Skelly, supra*, 15 Cal.3d at pp. 197, 201) The Supreme Court reviewed the disciplinary action provisions of the Civil Service Act. (*Id.* at pp. 202-205.) The Act defined the causes

justifying discharge and the procedure by which a permanent employee may be discharged or disciplined. (*Id.* at pp. 202-205.) For example, under the Act a permanent employee may not be dismissed or subjected to discipline unless there was cause. (*Id.* at pp. 207-208.) The Supreme Court concluded, based on those provisions, that the Act conferred on permanent employees a property interest in the continuation of their employment, which interest was protected by due process. (*Id.* at pp. 207-208; *Jones v. Omnitrans* (2004) 125 Cal.App.4th 273, 279 [public employee subject to discharge only for cause has a constitutionally protected property interest in continued employment].) It explained, "Property interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." [Citation.]" (*Skelly, supra*, 15 Cal.3d at p. 207; see *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 170-171 [police department's manual created expectations and entitlements which gave rise to a property interest within the meaning of the due process clause where it restricted the department's decision-making with regard to reductions in pay grade].) Because permanent employees had a property interest, the State must comply with procedural due process requirements before it may deprive them of their property interest by punitive action. (*Skelly, supra*, 15 Cal.3d at pp. 207-208.) At a minimum, due process requires that before discipline takes effect, the State must provide notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based and the right to respond to the authority initially imposing discipline. (*Id.* at p. 215; *Coleman v. Regents of University of California* (1979) 93 Cal.App.3d 521, 525-526 (*Coleman*) [the opportunity to respond must come after the notice of intention to dismiss is provided].)

The minimum procedural safeguard enunciated in *Skelly* are applicable to permanent employees of the Regents even though they are not subject to the Civil Service

Act. (*Coleman, supra*, 93 Cal.App.3d at p. 525; *Mendoza v. Regents of University of California* (1978) 78 Cal.App.3d 168, 172-175 (*Mendoza*).) In concluding that nonacademic career employees have a property interest in continued employment with the Regents, the court in *Mendoza* noted that the Regents' staff personnel policy distinguished between career and casual or probationary employees, invested career employees with post-termination remedies, and provided that such employees may only be discharged for cause. (*Id.* at pp. 174-175.) The court in *Mendoza* said that while the Regents were under no duty to confer a right upon career employees, once conferred it could not take away that right without due process safeguards. (*Id.* at p. 175; *Amluxen v. Regents of University of California* (1975) 53 Cal.App.3d 27, 36 [due process requires government agency to comply with its own discharge regulations].)

Although LaMarr did not cite *Skelly* in the trial court and did not articulate the denial of due process claim she now asserts on appeal, she has demonstrated that she should be given an opportunity to amend her pleading to state a denial of due process cause of action. LaMarr says she was a permanent employee of the Regents and her employer had a policy requiring just cause for discipline. The Regents' Personnel Policies for Staff Members (PPSM) 62, which it represented applied to LaMarr, provided that the employer will provide the employee written notice of intent to take corrective action, including a demotion. PPSM 62 stated the notice of intent will state the intended corrective action, the reason for the action and the proposed effective date of the action and that the employee has a right to respond. The notice of intent will also include a copy of documents on which the corrective action is based, if any. University of California Davis' Personnel Policies for Staff Members referred to the review of a notice of intent to take corrective action and the employee's response thereto as a "Skelly Review." Procedure 62.1 provided that if a demotion is appropriate, the employee's "supervisor gives the employee written notice of intent to take corrective action," "[t]he employee may respond, orally or in writing, to the official reviewer" who makes a

recommendation to the disciplining authority and if corrective action is to be taken, the supervisor issues the letter. LaMarr claims the Regents did not give her written notice of a demotion, she did not receive any writing explaining the reasons for a demotion, and she was not given an opportunity to contest a demotion. Based on the cases we have discussed, the alleged facts are sufficient to state a denial of due process cause of action. We express no opinion about whether LaMarr can prove her claim.

The Regents argue LaMarr conceded, in her opposition to the demurrer, that she was not demoted. We disagree. LaMarr's opposition said that after she filed an administrative complaint under the FEHA, University representatives asked her if she wanted to remain in her post-demotion classification and new department, return to her former department at the post-demotion classification, or return to her former department at her pre-demotion classification but proceed with a pending action to terminate her employment. Given those choices, LaMarr elected to stay in her post-demotion classification and new department. LaMarr did not concede that her employer did not demote her.

The Regents also reassert the procedural argument that the trial court did not give LaMarr permission to add the denial of due process cause of action. It is true that LaMarr required leave of court to amend her complaint after the trial court ruled on the original demurrer (Code Civ. Proc., § 472, subd. (a)), that the trial court did not give LaMarr leave to add a denial of due process cause of action, and that under such circumstances the trial court was authorized to strike the cause of action upon a motion by the Regents or at any time in its discretion. (Code Civ. Proc., § 436, subd. (b).) But the Regents did not move to strike the denial of due process cause of action and the trial court did not exercise its discretion to strike it. The procedural argument lacks merit.

DISPOSITION

The portion of the judgment sustaining without leave to amend the demurrer to the denial of due process cause of action is reversed. Each party shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

/S/
MAURO, J.

We concur:

/S/
BLEASE, Acting P. J.

/S/
MURRAY, J.